

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES C. MOTEN,

Petitioner,

vs.

No. CV 19-01185 MV/JHR

WARDEN, NORTHWESTERN NEW MEXICO
CORRECTIONAL CENTER, and
ATTORNEY GENERAL OF THE STATE OF
NEW MEXICO,

Respondents.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under Rule 41(b) of the Federal Rules of Civil Procedure on the Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus [Doc. 1], filed by Petitioner James C. Moten. The Court will dismiss the Petition without prejudice for failure to comply with a Court order and failure to prosecute.

The record reflects that certain mailings to Petitioner were returned as undelivered. *See* Doc. 7, 9. The New Mexico Department of Corrections' records indicate that Petitioner has been released from the custody of the Department of Corrections. It appears that Petitioner has been released from custody without advising the Court of his new address, thus severing contact with the Court.

On October 21, 2021, the Court entered an Order to Show Cause ("Show Cause Order"), directing Petitioner to show cause within 30 days why the case should not be dismissed for failure to comply with the Local Rules and for failure to prosecute the case. Doc. 8. The Show Cause Order stated that, if Petitioner did not provide a current address or show cause within 30 days, the case could be dismissed without further notice. *Id.* The copy of the Show Cause Order mailed to

Petitioner at his address of record has been returned as undeliverable. Doc. 9. Plaintiff Moten has not responded to the Show Cause Order, has not provided the Court with a current address, and has not communicated with the Court.

Pro se litigants are required to follow the federal rules of procedure and simple, nonburdensome local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980). The Local Rules require litigants, including prisoners, to keep the Court apprised of their proper mailing address and to maintain contact with the Court. D.N.M. LR-Civ. 83.6. By failing to keep the Court apprised of his current address, Petitioner has failed to comply with Rule 83.6, has failed to comply with the Show Cause Order, and has failed to prosecute this action. For these reasons, the Court will dismiss this action pursuant to Rule 41(b). *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003).

Also pending before the Court is Respondent's Motion to Dismiss [Doc. 10], filed on November 29, 2021. As this Court has determined, for the reasons set forth herein, to dismiss this action, Respondent's Motion to Dismiss is moot.

IT IS ORDERED:

(1) Respondent's Motion to Dismiss (Doc. 10) is **FOUND AS MOOT**; and
(2) the Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus (Doc. 1) filed by Petitioner James C. Moten and all claims in this case are **DISMISSED** without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the Court's Order and failure to prosecute.



UNITED STATES DISTRICT JUDGE